

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: James B. Bryan III Spring Hammock Infill Donation

DEPARTMENT: Leisure Services

DIVISION: Natural Lands

AUTHORIZED BY: Joe Abel

CONTACT: Jim Duby

EXT: 2001

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the Land Donation Agreement for 9.59 acres adjacent to the Spring Hammock Preserve, owned and offered for donation by Mr. James Bryan III.

District 5 Brenda Carey

Jim Duby

BACKGROUND:

Mr. James Bryan III contacted County staff in December 2007 and expressed a desire to donate 9.59 acres and all associated interest/easements to the Seminole County Natural Lands Program. This property is located on the northern boundary of the Spring Hammock Preserve immediately to the south of Nativity Catholic Church and west of the Florida Auto Auction with parcel identifications of 21-20-30-5AP-000-0050 and 21-20-30-5LJ-0E00-0000. At their meeting on January 8, 2008 the Seminole County Board of County Commissioners authorized staff to move forward with the development of a Land Donation Agreement and necessary due diligence to process this donation. Survey, Title Search and a Level One Environmental Assessment have all been satisfactorily completed and the attached Land Donation Agreement has been drafted and approved by the County Attorneys Office.

STAFF RECOMMENDATION:

Staff recommends that the Board approve the execution of the attached Land Donation Agreement.

ATTACHMENTS:

1. James Bryan III donation letter
2. Agreement

Additionally Reviewed By:

☒ County Attorney Review (Arnold Schneider)

The Auto Team

Sent Via DHL Overnight Delivery

December 4, 2007

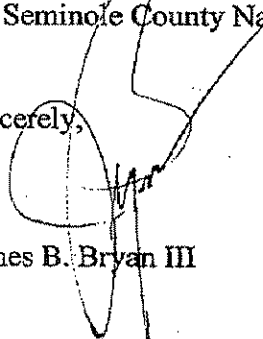
Jim Duby
Manager/Natural Lands
Seminole County Natural Lands Division
3485 North County Road, 426
Geneva, FL 32732

**RE: 9.59 Acre Parcel
Located in Seminole County, Florida**

To Whom It May Concern:

I would like to donate a piece of property to Seminole County for the benefit of the Spring Hammock Preserves. I own a 9.59 acre parcel, which includes an easement of approximately ¼ mile by 40 feet or 10+/- acres through Spring Hammock Preserves, all of which I'd like to see added to the Preserve. The property is located directly west of the Orlando Longwood Auto Auction in Seminole County. As such, please accept this letter as my formal offer of donation to the Seminole County Natural Lands Division for the benefit of the Spring Hammock Preserve.

Sincerely,



James B. Bryan III

LAND DONATION AGREEMENT

THIS AGREEMENT, entered into this 13 day of May, 2008, by and between **JAMES B. BRYAN, III**, an individual person, whose mailing address is P.O. Box 4249, Winter Park, Florida 32793, hereinafter referred to as "DONOR" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "DONEE".

W I T N E S S E T H:

WHEREAS, DONOR owns the unencumbered fee simple title to certain lands within the unincorporated area of Seminole County, hereinafter referred to as the "Property" and legally described as:

Lot 5 of SPRING HAMMOCK, according to the Plat thereof, as recorded in Plat Book 2, page 2 through 5 inclusive, of the Public Records of Seminole County, Florida and that part of platted Third Road, as shown on the plat of Spring Hammock, as recorded in Plat Book 2, Page 2 though 5 inclusive, of the Public Records of Seminole County, Florida, lying adjacent to said Lot 5 along the Easterly boundary of that portion of Third Road vacated in Resolution 90-R-347 recorded in Official Records Book 2256, Page 1670, Public Records of Seminole County, Florida.

Parcel Identification No.: 21-20-30-5AP-0000-0050

referred to herein after as the "Property"; and


WHEREAS, DONOR desires that the Property become a part of DONEE's Spring Hammock Preserve and that it be preserved in its natural state and used for environmental conservation, habitat for native plant and animal species as well as passive recreation by the general public, consistent with the ordinances and policies of DONEE's Natural Lands Program and DONEE has agreed to accept the Property subject to the terms and conditions herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. RECITALS. The foregoing recitals are true, form an integral part of the terms and understandings upon which the parties have relied and are hereby fully incorporated into this Agreement by reference.

2. CONVEYANCE OF REAL PROPERTY ONLY.

(a) This Agreement shall only be for the conveyance of the above described Property. No personal property whatsoever shall be sold, transferred or conveyed by this instrument.

(b) DONOR shall execute and deliver to the DONEE a special warranty deed conveying all rights, fee simple title and interest in the Property forever to DONEE.  The parties agree that the Special Warranty Deed may, at DONOR'S option, contain such deed restrictions as DONOR deems necessary to assure that the Property shall only be used for passive recreation as defined in section 190.152(d), Seminole County Code, used consistently with sections 190.154 and 190.155, Seminole County Code as those Code provisions are in effect as of the date hereof and those conservation purposes envisioned in that certain Conservation Easement recorded in Official Records Book 2305, Pages 0260 through and including 0263, Public Records of Seminole County, Florida. The Special Warranty Deed shall contain a reverter clause that in the event DONEE or its successors use the Property inconsistent with such use restrictions, title shall automatically revert to DONOR.

(c) DONOR shall further agree to execute all instruments reasonably required by DONEE's title insurance company necessary to clear title and affirm DONOR's title and interests in the Property so that DONEE's title insurance company may issue an Owner's Title Insurance Policy in DONEE's name in an amount not less than the just market value of the Property as determined by the Seminole County Property Appraiser for the tax year 2008.

3. CLOSING DATE: The closing and execution of the deed and the other closing papers shall occur within ten (10) days from the Contract Date (i.e., within ten (10) days of DONEE giving notice to DONOR of its intent to proceed with acceptance of the Property) unless extended by the parties, and DONOR agrees to deliver possession on the date of closing. The Contract Date shall occur no later than seven (7) days from the date of execution of this Agreement by both parties. Time is of the essence as to the Contract Date and the closing date.

4. ENVIRONMENTAL CONCERNS, ZONING, RESTRICTIONS, EASEMENTS AND OTHER MATTERS: DONEE shall take title subject to zoning, restrictions, prohibitions and other requirements imposed by governmental authority, restrictions and matters appearing of record or otherwise common to the subdivision, public utility easements of record and taxes. The DONOR shall provide an affidavit at or before closing stating that to the best of DONOR's knowledge and belief, no hazardous waste or materials or environmental contaminations or violations are located on, upon or within the Property. In the event that DONOR's affidavit or an environmental audit, performed by DONEE prior to closing at its sole option, confirms or indicates the probable presence of hazardous wastes or materials or environmental contamination on the Property,


DONEE, at its sole option, may elect to terminate this Agreement. If this Agreement is not terminated, DONOR may, but shall not be obligated, at its sole cost and expense and prior to the closing, promptly commence and diligently pursue any assessment, clean up and monitoring of the Property necessary to bring the Property into full compliance with any and all applicable Federal, State or local laws, statutes, ordinances, rules, regulations or other governmental restrictions regulating, relating to or imposing liability or standards of conduct concerning hazardous waste or materials or environmental contamination ("Environmental Law"). If DONOR elects not to pursue any further assessment, clean up and monitoring of the Property as set forth herein, DONEE may, in its sole discretion, elect not to acquire the Property. If DONEE elects not to acquire the Property, then this Agreement may be terminated by DONEE and neither party shall have any further obligations under this Agreement or liability to the other party for breach of contract damages arising from such termination.

5. OCCUPANCY: DONOR represents that there are no parties in occupancy other than DONOR and that the Property shall not be rented or occupied beyond closing. DONOR agrees to deliver occupancy of Property at time of closing. DONOR shall not convey any interest, right or title in the Property, including leases prior to the date of acceptance of the donated Property by DONEE.

6. RIGHT OF ENTRY. DONEE, its employees, agents and surveyors shall have the right to enter upon the Property prior to the closing for the purposes of conducting necessary surveys, a Level 1 Environmental Review and testing, native and exotic species surveys or other field

analyses necessary and incidental to making its determinations as to accepting or declining of the Property donation. DONEE agrees that it shall assume all risks and further expressly agrees to waive any claim for personal injury or property damage against DONOR that may arise by virtue of DONEE's officials, employees, agents or contractors having previously entered or subsequently entering upon the Property for said purposes. The foregoing agreement by DONEE not to seek tort damages shall survive the closing and termination or expiration of this Agreement.

7. PROPERTY TO BE FREE AND CLEAR OF ALL LIENS. DONOR shall convey the Property free and clear of all mortgages and judgments with the exception of unpaid Property taxes and tax certificates therefore as may have been issued under law by the Seminole County Tax Collector.


8. DONEE RESPONSIBLE FOR CLOSING COSTS.  DONEE shall be responsible for all costs to close the donation and effect a conveyance of fee title to DONEE including title insurance, State documentary stamps, recording fees, unpaid real Property taxes, and the DONEE's own attorney's fees. The DONOR shall pay its own attorney's fees and all other costs incurred by DONOR.

9. DONEE'S RIGHT OF REFUSAL. DONEE shall reserve the right, in its sole discretion, prior to closing, to not proceed with the dedication and transfer of fee title of the Property by DONOR to DONEE. This Agreement shall not be construed to permit DONOR to grant, give or dedicate the Property or any portion and/or right thereof to the DONEE, including the recording of any instrument conveying any right/title to the Property in the Public Records of Seminole County, without the DONEE's express approval. In the event that the DONEE shall not approve

the dedication of the Property by the DONOR, this Agreement shall cease and become void with both parties having no further obligation to each other except as provided in section 6 hereof with respect to liability for personal injury and waiver of claims by DONEE.

10. AFFIDAVIT OF OWNERSHIP. The DONOR shall execute the affidavit of ownership required by Fla. Stat. 286.23, attached hereto as Exhibit "A".

11. ENTIRE AGREEMENT BETWEEN THE PARTIES. This Agreement constitutes the entire agreement between the parties hereto and there are no other agreements, understandings and/or representations between the parties with respect to conveyance of the Property.

12. NO ASSIGNMENT OF AGREEMENT AND DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is not assignable by either party to any other person. This Agreement is  solely for the benefit of the parties hereto and no right or cause of action shall accrue to or for the benefit of any other third party.

13. MISCELLANEOUS.

(a) The parties represent to each other that each, respectively, has full right, power and authority to execute this Agreement and that they have done all things necessary as conditions precedent to the execution hereof.

(b) This Agreement shall be construed in accordance with the laws of the State of Florida. The parties hereby consent to venue in the Circuit Court in and for Seminole County, Florida as to State actions and the United States District Court for the Middle District of Florida, Orlando Division as to Federal actions.

(c) If any term of this Agreement is found to be void or invalid by a court of competent jurisdiction, such invalidity shall not effect the remaining terms of this Agreement which shall continue in full force and effect.

(d) All sections and descriptive headings in this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation hereof.

(e) The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties, but this provision shall in no way alter the restrictions hereon in connection with assignment.

(f) This Agreement may be executed in counterparts, each of which shall be deemed by the parties as an original and all of which shall constitute one and the same Agreement.

SECTION 14. EFFECTIVE DATE. This Agreement shall become effective immediately upon its execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed:

WITNESSES:

Print Name

Print Name

Print Name

DONOR

By: _____
JAMES B. BRYAN, III

Date: 5/13/08

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BRENDA CAREY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution by the
Board of County Commissioners at
their _____, 2008
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney
AWS/lpk
1/29/08 rev. 3-3-08 (AWS)

Attachment:
Exhibit "A" - Affidavit of Interest in Real Property Fla. Stat. 286.23



EXHIBIT "A"

AFFIDAVIT OF INTEREST IN REAL PROPERTY, FLA. STAT. 286.23

THIS AFFIDAVIT OF INTEREST IN REAL PROPERTY is made and entered into this _____ day of _____, 2008, for the sole purpose of compliance with Section 286.23, Fla. Stat.

The undersigned hereby swears and affirms that the following is true:
The name and address of the DONOR of the before described Property is:

JAMES B. BRYAN, III, P.O. Box 4249, Winter Park, FL 32793

The name(s) and address(es) of every person having a beneficial interest in the before described Property that is the subject of negotiations for donation by DONOR to DONEE is/are:

(1) Name: _____


Address: _____

(2) Name: _____

Address: _____

(3) Name: _____

Address: _____

Additional names and address are  attached as Exhibit "A-1", if any.

FURTHER AFFIANT SAYETH NAUGHT.

WITNESSES:

DONOR:

By: _____

JAMES B. BRYAN, III

Print Name

Date: _____

Print Name

STATE OF FLORIDA)

)

COUNTY OF)

I HEREBY CERTIFY that, on this _____ day of _____, 20____, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JAMES B. BRYAN, III who is ☐ personally known to me or ☐ who has produced _____ as identification; and that he did take an oath.

(Notary Seal)

Notary Public in and for the County
and State Aforementioned